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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/795,966

03/08/2004

Gary Marshik

BSI-036

8628

51414 7590 12/19/2007

GOODWIN PROCTER LLP  
PATENT ADMINISTRATOR  
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EXAMINER

STRIMBU, GREGORY J

ART UNIT

PAPER NUMBER

3634

MAIL DATE

DELIVERY MODE

12/19/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/795,966	<b>Applicant(s)</b> MARSHIK ET AL.	
	<b>Examiner</b> Gregory J. Strimbu	<b>Art Unit</b> 3634	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4, 6-9, 11, 14, 15, 17, 19 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 6-9, 11, 14, 15, 17, 19, 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

Claims 27-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "a locked position" on line 3 of claim 27 render the claims indefinite because it is unclear if the applicant is referring to the locking position set forth above or is attempting to set forth another position in addition to the one set forth above.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 6-9, 11, 14, 15, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wahlfeld et al. (US 3222733) in view of Trout (US 3797168). Wahlfeld et al. discloses a balance shoe for use in a window jamb, comprising: a slide block 169 comprising a lower end (not numbered, but shown in figure 6 disposed generally below the pin 177), a front surface (not numbered, but shown on the left hand side of the slide block in figure 6), a rear surface (not numbered, but shown on the right hand side of the slide block in figure 6), and oppositely disposed sliding surfaces (not numbered, but shown in figure 3 as the surfaces of the slide block perpendicular to the front and rear surfaces) connecting the front surface with the rear surface, the sliding

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surfaces adapted for guiding the slide block when installed in the jamb; a pivoting locking member 170 at least partially disposed about the lower end, the front surface, and the rear surface of the slide block, the locking member coupled to an external surface the slide block and biased into a locking position when installed in the jamb, the pivoting locking member extending beyond only one of the sliding surfaces (as shown in figure 6) and the lower end of the slide block at least when the pivoting locking member is in the locking position, wherein the pivot locking member comprises a tooth 182 for engaging the window jamb and is biased into the locking position by a spring 184; and a camming surface 183 disposed on the pivoting locking member that, upon application of a force, retracts the pivoting locking member from the locking position, wherein the tooth 182 is adapted to penetrate the window jamb 45, wherein the camming surface is engagable with a pivot bar 154 disposed on a tilt-in window sash 47, wherein the balance shoe is adapted to attach to a window balance 72, wherein the balance shoe is made from the polymer nylon as set forth on lines 3-5 of column 8, a window frame 10. Wahlfeld et al. is silent concerning teeth.

However, Trout '168 discloses a balance shoe wherein a pivoting locking member 86 includes teeth 116 that penetrate the window jamb 44.

It would have been obvious to one of ordinary skill in the art to provide Wahlfeld et al. with teeth, as taught by Trout '168, to enable the pivoting locking member to more securely grip the jamb.

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wahlfeld in view of Trout '168 as applied to claims 1, 4, 6-9, 11, 14, 15, 17 and 19 above, and further in view of Trout (US 4271631). Trout '231 discloses a slide block 94 comprising a ledge (not numbered, but shown in figure 4 as the horizontal surface of element 112) extending from a rear surface (not numbered, but shown as the right hand side of the slide block 94 in figure 3), the ledge configured to contact and to limit rotation of a pivoting locking member 96 when in a locked position as shown in figure 4.

It would have been obvious to one of ordinary skill in the art to provide Wahlfeld, as modified above, with a ledge engageable by the pivoting locking member, as taught by Trout '231, to ensure the pivoting locking member is maintained in the locking position.

### ***Response to Arguments***

Applicant's arguments filed October 4, 2007 have been fully considered but they are not persuasive.

Regarding to the applicant's comments concerning Wahlfeld et al., the examiner respectfully disagrees. Claims 1, 9 and 15 only require the pivoting locking member to be coupled to an external surface of the slide block. Thus, Wahlfeld et al. meets this limitation since the pivoting locking member 170 is coupled to, i.e., connected to, the pin 177, which is coupled to housing section 172, which includes an external surface. Additionally, Wahlfeld et al. discloses a pivoting locking member 170 which is at least partially disposed about the lower end, the front surface, and the rear surface of the

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slide block 169 since the locking member 170 is disposed adjacent to the lower end and the front and rear surfaces of the slide block 169 as shown in figure 6.

Regarding the applicant's comments concerning Trout '168, the examiner respectfully disagrees. As shown in figure 1 of Trout '168, the pivoting locking member 86 is coupled to an external surface of the slide block 64. The locking member 86 of Trout '168 is not disposed within the slide body 64 as argued by the applicant since the spacing lugs 78 do not define the slide body. Rather, the spacing lugs 78, like the locking member 86, extend from an external surface of the slide block 64.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Gregory J. Strimbu', with a stylized flourish at the end.

Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
December 14, 2007